No. 2292

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

PACIFIC TOW BOAT COMPANY, a Corporation of the State of Washington, Owner of the Tug "Argo,"

Appellant.

vs.

IVOR NORDSTROM, Intervener,

Appellee.

"IN THE MATTER OF THE PETITION OF THE PACIFIC TOW BOAT COMPANY, a Corporation of the State of Washington, Owner of the Tug "Argo" for Limitation of Liability."

BRIEF FOR APPELLANT

C. H. HANFORD,

Proctor for Appellant.

Filed this.....day of September, 1913.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

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BRIEF FOR APPELLANT

The main question to be decided in this case is whether the Intervener, Ivor Nordstrom, has a valid claim against the Tug "Argo" or her owner for damages on account of an injury which he suf-

fered while at work on board of her as a member of her crew.

FACTS.

1. The appellant is a corporation and, at the time of the injury to appellee, was the owner of the Tug "Argo" and operating her as a towing vessel upon the waters of Puget Sound.

2. The appellee was employed as a member of the regular crew of the Argo in the capacity of fireman, and had been so employed for a period of five or six weeks preceding his injury.

3. It was part of the appellee's duties, as fireman to oil the engine. The same being a compound engine of the kind in general use on Puget Sound tugs.

4. The engine is situated in the lowest space in the hull and, within its frame, there is a space called the crank-pit within which the cranks revolve.

5. On the night of November 22, 1910, the "Argo" was going at full speed on a run from Richmond Beach to Seattle in heavy weather and, while the appellee was in the performance of his duty, the boat lurched, causing him to lose his balance and, by contact with one of the cranks of the engine, his left foot was crushed.

6. After being in a hospital several weeks, where he was treated by a surgeon of the Marine Hospital Corps of the United States, the appellee's leg was amputated between the knee and the ankle.

7. To recover damages for said injury, the appellee commenced an action in the Superior Court of the State of Washington against the appellant; the amount sued for being in excess of the value of the "Argo."

8. Thereupon the appellant instituted this cause and the further prosecution of said action in the Superior Court was enjoined.

9. In response to the notice requiring claims for damages to be presented and proved, the appellee appeared and filed his claim for damages and, also, filed an answer to the appellant's petition in the United States District Court for the Western District of Washington.

10. The cause proceeded in said District Court to a final decree, by which the appellant was awarded damages in the sum of $5000.00, with interest on that sum from the date of the injury, and costs.

11. The specified ground of liability of the "Argo" and her owner is, alleged negligence in not providing a sufficient barrier across the open spaces between the upright columns, or standards, of the engine so as to prevent employees from falling, or stepping, into the crank-pit; and in having and maintaining, across said open spaces, a sheet of thin metal the top edge of which was bolted to the columns and the bottom of which was not fastened but was loose and yielding and acted, as alleged, like a trap in admitting the appellee's foot to enter the crank-pit and impeded its withdrawal.

(All of the evidence, descriptive of the engine, crank-pit, engine room and the sheet of thin metal, is reproduced in the appendix to this brief. And, for convenience, there is also appended, a cut made from a photograph of the engine. This is not evidence but is like a mere diagram drawn on paper or a blackboard and is intended for no other purpose than to assist counsel for the parties in the effort to explain the evidence.)

ERRORS ASSIGNED.

1. The District Court erred in finding and deciding that the injury suffered by Ivor Nordstrom was caused by an appliance or equipment of the tug "Argo," referred to in the Court's written decision as "the offending shield or guard."

2. The District Court erred in finding and deciding that the so-called shield or guard referred to was a dangerous contrivance.

3. The District Court erred in finding and deciding that the so-called dangerous contrivance had been continuously maintained for four years and that continuous maintenance thereof was negligence imputable to the owner of the "Argo."

4. The District Court erred in failing to find that the injury suffered by Ivor Nordstrom was caused by lurching or rolling of the "Argo" and by the crank of her engine which was not defective.

5. The District Court erred in failing to find that the injury suffered by Ivor Nordstrom was

caused by an ordinary accident comprehended in the risks incidental to his employment and assumed by him.

6. The District Court erred in failing to find that the only negligence involved in the cause of the injury suffered by Ivor Nordstrom was chargeable entirely to a fellow-servant to-wit: the engineer of the "Argo" in misplacing the so-called shield or guard and failing to keep it securely fastened; and contributory negligence of said Nordstrom.

7. The District Court erred in awarding to said Nordstrom an excessive amount of damages.

8. The District Court erred in awarding to said Nordstrom interest from the date of his injury on the $5000.00 assessed as his damages.

9. The District Court erred in rendering a decree in favor of said Ivor Nordstrom and against the petitioner.

POINTS AND AUTHORITIES.

Faulty construction, equivalent to unseaworthiness of the vessel and injury suffered as a consequence of the specified fault are necessary to be shown by the appellee in order to entitle him to any amount of compensation other than wages and the expenses of his cure.

The Osceola, 189 U. S. 158, 23 Sup. Ct. Rep. 483, 47 L. Ed. 760.

The Esperanza, 133 Fed. 1015.

The Mars, 138 Fed. 941.

Same case, 149 Fed. 729.

The Osceola case established the general rule. The cases cited from the Federal Reporter were decided with reference to that general rule and are useful merely as illustrative of its application.

There is no evidence in the case, descriptive of the manner in which the appellee was injured, save his own uncorroborated testimony. It is a physical impossibility for the accident by which he was injured, to have happened in the manner described by him and, his testimony being unbelievable, there is no evidence to support a decree in his favor.

There is a total failure of proof to sustain the allegations of the appellee's pleadings charging defectiveness or insufficiency of the sheet metal guard attached to the Argo's engine, either in the guard itself or the manner in which it was connected, or in misplacing it, or in looseness or lack of secure fastenings.

The burden of proof rests upon the appellee to show affirmatively lack of ordinary care in failing to provide or keep in order appliances required for reasonable safety.

> *Johnson vs. Frederick Leyland & Co.*, 153 Fed. 572.
>
> *The Henry B. Fiske,* 141 Fed. 190.

Where a ship owner provides necessary equipment and appliances, neither he nor the ship incur liability for personal injuries to a member of the crew resulting from negligence of the master and officers in charge of her in failing to use and keep

in place moveable equipment and appliances, such as hatches or fastenings to close openings into, or through which, he may fall or be thrown by the lurching or rolling of the vessel.

Olson vs. Oregon Coal & Navigation Co., 96 Fed. 109.

Judge DeHaven's decision in that case was affired by this Court in 104 Fed. 574, and is fully sustained by the Supreme Court in the Osceola case.

The question as to seaworthiness and sufficiency of equipment and appliances is to be determined with reference to the customs and usages of the port or country to which the vessel belongs, the existing state of knowledge and experience, and the judgment of competent persons versed in such matters.

25 *Am. & Eng. Enc. Law,* 2nd Ed., p. 125 (VI, 1.)

By the decision and decree of the District Court, interest on the sum awarded as damages, from the date of the injury was allowed. Such additional allowance is unwarranted by law and conflicts with the decision of this Court in the case of *Burrows vs. Lownsdale,* 133 Fed. 250.

ARGUMENT.

There is not in the testimony any intelligible description of the Argo's engine, giving measurements or exact information as to its general description or

style. On page 40 of the Apostles, in the testimony of the witness Brownfield, it is called "an ordinary 4½ compound engine;" and on pages 150-1, in the testimony of the witness Studdert, it is called a "fore and aft compound," its size is "9-22-20" and "it has three columns on its open face."

Steam engines differ, in the details of their construction, as much as the vessels they are placed in differ in dimensions and interior arrangements. Hence, only to a very limited extent can general knowledge of mechanics be relied upon to supply deficiencies of evidence descriptive of an engine and its attachments necessary to an intelligent or fair adjudication of a controversy respecting alleged defects.

In this case it will be impossible to write an opinion containing a description of the Argo's engine and attachments made up from the evidence submitted.

The learned Judge who rendered the decree appealed from, appears to have given deep study to questions of practice under the limited liability law, but, from his written decision, it is clearly apparent that he did not attempt to analyze the evidence relating to the alleged defects in equipments and appliances on which the charge of negligence is based.

Without understanding the engine or equipments of the engine room, he accepted the conclusions of witnesses that there was a defect notwithstanding

an overwhelming preponderance of contradicting evidence.

The District Judge probably based his decision upon a vague idea that the thing which he styled "the offending shield or guard" was a piece of sheet iron of the thickness and strength of stove pipe iron hung by bolts at the top edge on vertical standards and loose at the bottom like a flap that would yield to slight pressume, and that there was nothing whatever to check a person's foot from slipping upon the floor of the passage way against such flimsy iron in a way to bend it inwards.

It is the appellant's contention that the evidence is too meagre to justify any such impression, or to support a finding that the so-called shield or guard was weak or insufficient, or that there was not a substantial guard to prevent a person's foot from slipping into the crank-pit, and, for lack of evidence to sustain the allegations of his pleading, the appellee has failed to prove any right to recover damages.

The meagreness of the evidence imposes very little burden upon the Court in scrutinizing it, but the facts which it does disclose should not be ignored, nor should its vagueness be held to justify an affirmative decision in favor of the party having the burden of proof.

One of the facts proved is, that there was a foot board or strip of timber on the floor of the passage way next to the frame of the engine (Apostles, p. 164).

Another fact is, that the floor was elevated about two inches above the horizontal frame or bed of the engine, (page 34).

Another fact is, that the columns of the engine on the side next to the passageway were three in number (p. 151) and that they were not vertical but inclined inward, that is to say, leaning inward towards the center of the engine frame, (page 53).

Another fact is, that the sheet iron guard was one-sixteenth of an inch thick, (pages 35-198). Such a piece of galvanized iron is substantial and has strength sufficient to require great force to make it bend.

Another fact is, that instead of being loose at the bottom, the sheet of metal was set up with its bottom edge resting upon the bed of the engine and wedged into a thin space between the columns and bolt heads or nuts which kept it from bending inward. (Pages 50, 166-7; 171; 199.)

Another fact is, that the spaces between the columns is only twenty-four inches wide. (pp. 49-53-66-164-177.)

Another fact is, that the reverse shaft is attached to the columns and crosses the spaces between them. (p. 214-15.)

Having in view the facts proved, four years of continuous service in the manner in which the guard was placed and maintained does not prove negligence but is an important circumstance tending to prove its reasonable sufficiency, for the reason that,

if it were a dangerous trap, some one of the experienced engineers and firemen who worked in that engine room, or the inspectors who annually made an official inspection of the vessel, would have condemned it.

The estimated width of the spaces between the columns, according to the most reliable evidence, is about two feet. As there is no accurate information such as could have been supplied by actual measurements, it must be assumed that the columns were approximately two feet apart. They were about five feet high. (p. 53.) The strip of sheet metal attached to them, and crossing the intervening spaces, is eighteen inches wide (p. 49); the top edge of the same is attached by "U" bolts to the columns (p. 35).

Without any holder at the bottom edge, it was a barrier across those open spaces, eighteen inches above the floor, sufficient to prevent a careless or blind man from walking into the crank-pit. Then another barrier, that is the reverse shaft, was attached to the columns, constituting a second and higher cross-bar.

It is going beyond the limits of reasonable argument to say that two cross bars, on standards only two feet apart, the lower one being eighteen inches above the floor, and a foot-rail on the floor next to the columns, were insufficient to afford reasonable protection.

By the standard of general custom in the equipment of steamboats and the judgment of competent

men, versed in such matters, the Argo's engine room was a reasonably safe place to work in.

The appellee's witnesses, whose evidence has a bearing upon this point, were Brownfield, Chesley, Ossinger and Wright, neither of whom could give the name of any steamboat, resembling the Argo, having a guard fastened to the foot of the columns of her engine.

Mr. Brownfield was the second engineer on the Argo at the time of the accident and had been for several weeks. He probably had occasion to remove and replace the so-called guard more than once and, whether he did or not, the thing itself and the fastenings were visible, and, if he were a competent witness to give expert evidence to prove neglignce in misplacing or lack of adequate fastenings, in the observance of ordinary care for his own safety, he should have remedied the defect, or at least, have made complaint concerning it. To himself, his shipmates and his employers, he owed a duty so to do. His failure to so act is a fact that outweighs, in probative force, all his testimony tending to prove negligence in this case.

There is no more reliable test for determining the question as to negligence of an employer, in failure to provide or maintain a safe place for employees to work in, than the rule that the degree of culpability, essential to create to liability to render compensation to an injured employee, consists in failure to observe that degree of care which a person of

ordinary capacity and prudence habitually observes for his own safety.

Application of this test raises the following questions:

Is Mr. Brownfield a man of ordinary capacity and prudence?

Is he a man having sufficient experience in the operation of machinery to be a competent judge of the requirements as to safety appliances?

Did he have ample opportunity to see and know of any defects in the Argo's engine, and its attachments, rendering it unsafe for a person to work about?

Did he discover or have knowledge of such defects previous to the accident in question?

A negative answer to the last question and affirmative answers to each of those preceding should absolve the appellant from liability for the reason that a practical application of the test proves that a man of ordinary capacity and prudence, for his own safety, failed during several weeks of time to discover a danger which if existing would have menaced him continually while he was performing the duties appertaining to his vocation. Therefore, there was no such danger. And, if answered differently, he will be disqualified as an expert witness.

Mr. Chesley was manager of the appellant company when the "Argo" was built and responsible for due care in the original construction and equipment. His testimony cuts two ways.

If his culpability was sufficient to subject the appellant to liability, his testimony, in so far as it

tends to prove failure to provide and keep in order the equipment necessary for safety, is the testimony of a stultified witness.

His testimony, however, is not strong, viewed as a confession of his own negligence. The Court will not find in it any satisfactory basis for sustaining the decision of the District Court.

A sheet of galvanized iron one-sixteenth of an inch thick is sufficiently rigid and firm to constitute a guard to prevent a person from stepping into a crank-pit. The most that can be truthfully said in condemnation of the guard in question is that it was not fastened at its bottom edge, or, that it was misplaced by being inside instead of outside of the columns.

If there was a fault in either of those particulars, it was due to an error of judgment, or negligence, of officers in charge of the navigation of the vessel, for which, no liability attaches to the vessel or her owner. (*The Osceola,* 189 U. S. 158; *Olson vs. Oregon Coal & Navigation Co.,* 96 Fed. 109; 104 Fed. 574.)

There is no difference in principle between failure to keep a port closed or a hatch covered and mere neglect to securely fasten a moveable obstruction at the open spaces of an engine.

Engines are made for use necessarily attended with danger, and reasonable care for safety of engineers and firemen does not require, nor justify, fencing or casing impeding access to their interior parts.

According to the testimony of competent marine engineers, superintending the operations of most of the tugs on Puget Sound, sheets of thin metal or canvas are used to prevent the spattering of oil about the engine room, and are not attached as permanent fixtures nor intended to be impassable barriers to shield employees from every possibility of being hurt.

The sheet of metal in question, as it was placed in the Argo, was sufficient for the service intended and similar to appliances in general and constant use on similar vessels. In proof of this, we cite the testimony of Studdert, pp. 150-155-157-169-170-171-172; Lovejoy, pp. 175-177-178-179 and 181; Ramwell, pp. 184-185-186-187 and 188; Anderson, pp. 196-199; Primrose, pp. 210-211-214-217-218-219 and 222.

In the trial of the case in the District Court, the main ground of defense against the appellee's claim was that the engine of the Argo and its attachments were installed in the ordinary manner according to the customs and usages generally observed on Puget Sound, and that a special guard to prevent stepping or slipping into the crank-pit is not, in the judgment of competent persons, versed in such matters, requisite for seaworthiness or safety of the crew.

That theory of the defense has been well supported by the testimony cited and appears to have been entirely ignored in the decision rendered.

We maintain that it is a valid and complete defense.

Until the idea of making business bear the financial burden of compensating workmen for injuries suffered in performance of labor, regardless of the natural obligation to render compensation for the consequences of wrongful conduct, shall become crystallized into law by legislative enactments, the rights and liabilities of litigants, in cases like this one, are governed by rules laid down by the Supreme Court in the Osceola case.

The piece of sheet iron in question did not inflict, nor cause, the injury. The initial cause was lurching of the vessel, which was an ordinary occurrence incidental to navigation; and the appellee was hurt by contact with a rotating crank working in no unusual manner.

The injury, therefore, was an accident incidental to the employment in which the appellee voluntarily engaged, affording no ground for a claim other than for wages and expenses for which he has not sued.

It is not the policy of maritime law to commercialize personal injuries, and courts of admiralty do not award exorbitant damages.

In this case $5000.00 is in excess of fair compensation, and interest on that sum, from the date of the injury, augments that allowance without warrant of law and contrary to the decision of this Court in the case of *Burrows vs. Lownsdale*, 133 Fed. 250.

The appellant respectfully submits that the decree should be reversed.

C. H. Hanford,
Proctor for Appellant.

APPENDIX.

TESTIMONY DESCRIPTIVE OF THE ARGO'S ENGINE.

Apostles Page 32

FRANK. C. BROWNFIELD, produced as a witness on behalf of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. HALL:

Q What is your name?

A Brownfield, Frank C. * * *

Q Where were you employed on the 22nd day of November, 1910? P. 33

A On the tug 'Argo,' Pacific Tow Boat Company.

Q How long had you been employed there?

A From the 5th of October.

Q 1910?

A Yes.

Q What was your position on the boat?

A Second engineer. * * *

Q Will you describe the position and condition of what is known as the crank-pit? P. 34.

WITNESS: (Interrupting)—The position and condition of it as it was on that boat,—on the 'Argo'?

A The position of it,—it is just a pit, an encasement that the cranks revolve in that is set down about 2 or 3 inches lower than the floor.

Q And what was in that crank-pit? * * *

A The cranks revolved in that pit.

Q What was on either side of the crank pit,—was there a passageway?

A There were 2 crank-pits,—one for the high press crank and one for the low,—and then there is the front of the engine, is where the fire room is located, and there is a floor there, and at the back, just aft of the engine there was a floor over the shaft,—you could walk around there, too.

Q State whether or not there was a passage way for the employees or people on the boat on either side of the crank pit? * * *

35. A No; there is no passage way on one side of it.

Q There was a passage way on the other side of it, though?

A Yes, on the other side of the engine.

Q Was there a shield or guard around, separating this passageway from the crank-pit?

A On the open side of the engine, yes—in fact, there was a guard on both sides.

Q Well, of what was that guard constructed?

A About 16th sheet iron.

Q And what was it fastened to? * * *

A It was bolted to the top with "U" bolts, bolted on the columns.

Q Was it fastened at the bottom?

A No, sir.

Q Was it on the inside or outside of the columns?

A On the inside of the columns.

Q You mean by that, the inside toward the revolving cranks?

A Yes, sir * * *

Q You say this crank pit was lower than the floor? P. 37-8.

A It was, yes, a little.

Q It was lower?

A Yes.

Q Do you remember how many cranks were in that pit?

A There is only one crank in each pit.

Q One in each pit?

A Yes, sir.

Q And was there just one pit guarded by this guard?

A The whole front of the engine was guarded—I mean the open face of the engine.

Q Well, how many pits?

A Two. * * *

Q You stated a little while ago that the lower part of this guard was not fastened to the column?

A No, it was not.

Q Was that noticeable except upon quite a careful examination? * * *

A The average person would not have noticed it; in fact, the average engineer would not. * * *

CROSS EXAMINATION.

BY MR. BYERS.

* * *

40. Q Now, this engine that you speak of—that was an ordinary 4½ compound engine?

A Yes, sir.

Q It was set in the hold of the boat in an ordinary way?

A Yes, sir.

Q The boiler was set about how far forward?

A I don't remember.

Q Well, it was 6 or 8 feet?

A Yes. That does not make any difference, anyway. * * *

41 Q And then there was a passageway around back of the engine shaft, there being a floor laid over the shaft?

A Yes, sir.

Q It is usual in the ordinary way that engine and fire rooms in this class of boat are constructed, as far as you know?

A Well, boats of that size, yes. * * *

42-3. Q These cranks were in plain view, were they—as a matter of fact?

A Yes, as plain as any other part of the engine.

Q And about at what rate were they revolving?

A About 120.

Q Then that crank shaft would be going through there at 240 times a minute, would it?

A Going around about 120 times a minute, you mean.

Q And there were two crank shafts, were there?

A No, just one.

Q There were two cranks to this engine—one to the high pressure and one to the low, and each of these cranks were passing through there—the pit—at the rate of 120 times a minute?

A Yes.

Q Now, these cranks were traveling through there so rapidly, weren't they, so that anyone would know, and especially one who was a fireman, that if he got his foot into that pit that he could not extricate it in time to help it from being torn off or being very badly injured?

A *Certainly not.* * * *

Q You had been working on this "Argo" for how many months or years, or what length of time? P. 44.

A Since the 5th of October, that year.

Q And during all of that time, this guard, or what you call a guard, was in exactly the same condition as it was the night when he was hurt?

A Yes, sir.

Q As a matter of fact, this boat had been inspected during that time, had she not?

A During which time?

Q During the time you worked on her?

A She was inspected while I was on her.

Q And she had been inspected prior to the time you were on her?

A Yes, I suppose so.

Q And, as far as you know, this guard was in the same condition at the time of her prior inspections, and at the time of the injury, as it was and had been ever since the boat was built?

A As far as I know—yes.

Q Now, as a matter of fact, Mr. Brownfield, this guard that you speak of, is primarily intended to keep the oil from splashing out of the crank pit, isn't it?

A Oh, they do that—they keep the oil from spluttering out, all right. * * *

P. 47. RE-DIRECT EXAMINATION.

BY MR. HALL:

* * *

P. 49. Q How high was this guard?

A About a foot and a half, or something like that.

Q How wide was it?

A It extended along in front of the two crank pits, about, I guess, about four feet? * * *

P. 50. RE-CROSS EXAMINATION.

BY MR. BYERS:

Q You gave the height of this guard as about 18 inches?

A As near as I can remember.

Q You mean above the engine frame?

A No, I gave it as the width of the sheet iron piece.

Q Now, that width stood up on the engine frame, did it, on the bed?

A Yes.

Q Then how deep is that frame or bed, as you call it?

A How deep?

Q Yes.

A Six inches.

Q That engine frame sets on the engine bed; the engine bed is built into the boat upon timbers, isn't it?

A The engine bed is the cast iron bed.

Q The metal of this engine bed is how thick?

A The metal—oh, about 1 1-4 inches.

Q About 1 1-4 inches?

A Yes, sir—they are cast hollow.

Q I want you to tell how far about the foot of the columns these so-called guards reached. Do you understand what I am trying to get? How far was it from the engine bed down to the floor?

A To the floor that you walk on? P. 51.

Q Yes?

A The bed was below the floor.

Q You are certain of that, are you?

A Yes. In front ——

Q Now, this engine bed is set on what?

A Set on timber.

Q Set on timber?

A Yes.

Q And, as a matter of fact, that engine bed is a frame of iron which stands up about six inches?

A Yes.

Q Now, do you mean to say that flooring is six inches thick?

A The flooring there was about inch planks.

Q Then, as a matter of fact, the top of the engine bed would be about up five inches above the flooring?

A No.

Q Then, you mean to state that the flooring on the side, starboard side of the engine, was raised up on false work on 2x4's, so as to bring it up higher than the rest of the engine bed?

A Yes, it was that way. There is hardly any boats that way, rigged exactly with the floors above the beds that way; they are mostly flush right with the beds or a little below the beds—that is, boats of that size. Of course, some of these smaller ones the crank-pits are down in the bilge.

Q Mr. Nordstrom was a fireman, and was a fireman all the time that he was there?

A Yes, sir.

Q And, consequently, working around this engine, his duties kept him in the engine room all the time he was on duty?

A Yes, and the firing room, which was all one.

Q All one—and are a room of approximately—of what size?

A I don't know. I could take a rule down and measure. * * *

Q Just approximately. I am not asking you for exact figures, I just want as near as you can estimate it.

A Well, the room, with the space that is taken up by the engine, the plant, boilers, engine and everything, is on that boat about 12 feet wide and —oh—about 30 feet long—somewheres about that.

Q But the room from the after end of the boiler to the aft end of the engine was probably about 10x12, isn't it, approximately?

A Yes, about. Well, I guess a little longer.

Q And this guard is, as a matter of fact, considerably longer than you estimated it. It is nearer 7 feet than 4, lengthwise of the pan, is it not—that is, the length of it? You estimated it about 4 feet.

A Oh, you mean of this sheet. It has been quite a while since I have been there. I cannot. Oh, I guess about as long as this table. P. 53.

MR. HALL: Well, about how long—we cannot have the table there—about how long, approximately?

A I don't remember—put it down 4 feet, because I don't remember. Gee whiz! A man's got a memory——

Q Now, these columns to the engine don't go straight down, or perpendicular, do they?

A No, sir.

Q They don't?

A No, sir.

Q About what angle do they go from the cylinders down to the engine bed? Perhaps to make that clearer, if they were absolutely——

A I know what you mean.

MR. BYERS: I was trying to get it so it would appear in the record as plain as possible. How long are the columns in the first place?

A They are about five feet.

Q Five feet? Now, how much did they average from the perpendicular?

A They would be about 10 degrees.

Q How? In the revolutions of the cranks at their extreme limits—how far?

A That low press column on her, I think, was perpendicular—no, it was not, either—I am getting that mixed up with some other boats.

P. 54.

Q Now, the question is this: The cranks in revolving came approximately how far from the columns, that is if the column was placed immediately opposite the crank, how far would the crank come from hitting it as it revolved?

A On her, she runs pretty close to the column.

Q On her, she runs pretty close to the column?

A Yes, sir.

Q And now you say that this guard was fastened only at the top?

A Yes, sir. * * *

W. R. CHESLEY, produced as a witness on be-

half of the Claimant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. FULTON:

Q What is your name?

A W. R. Chesley. * * *

Q Do you know what there was in the way of a passageway around the engines and crank pit? P. 56-7.

A Well, I know that there was a passageway there, yes, sir.

Q What was this used for?

A Well, for going past the engine, to attend to any of the machinery which was abaft of the engine. * * *

Q Now, do you know what there was constructed or maintained upon this passageway, if anything, in the way of a guard for the protection of employees or persons using it?

A You mean in regard to the engine?

Q Yes?

A I know there was a guard put up there.

Q That was?

A At the time she was built.

Q For what purpose?

A To protect persons from falling into the machinery and crank-pit.

Q Crank-pit?

A Yes, from stepping in.

Q Now, what knowledge have you of the installation of this guard?

A As to the detail, none, any more than to have seen that it was there.

Q As to any part of it, what knowledge have you?

A Nothing more than to see this guard of iron along there. * * *

P. 62. CROSS-EXAMINATION.

BY MR. BYERS:

* * *

P. 65. Q Now, then, what is contained in this crank-pit?

A It is the main shaft and connecting rod principally.

Q The connecting rod is the rod that leads from the piston to the crank shaft?

A Yes.

Q Now, that connecting rod is fastened to the crank shaft, how?

A Usually by a strip going around the crank shaft, and coming up and the connecting rod is bolted to it.

Q Then that leaves a projection on one side of the crank shaft?

A Yes.

Q And on the other side of that projection what is there?

A On the opposite side of the crank shaft?

Q Opposite to this fastening which you have described, what is there on the other side of the crank shaft?

A Well, I would not think there would be anything opposite to that fastening. Sometimes there is a balance on the opposite side. P. 66.

Q Now, this counter-balance and what you say is the fastening between the connecting rod and the crank shaft, make practically two large spokes that revolve in the crank pit?

A As it balances on one side and the offset in the shaft would be opposite to it.

Q Yes; now this revolves in that crank-pit?

A Yes, sir.

Q Now, how rapidly did this engine turn it when it was going at full speed.

A I presume at 110 to 130 revolutions. * * *

Q How wide is each crank pit?

A I should judge possibly 24 inches or such a matter.

Q Yes; now, in that crank-pit there is revolving a crank shaft with its projection and the counter-balance on the other side so it makes a heavy mass of iron turning in that crank-pit twice the number of the strokes of the engine?

A Yes.

Q So it will be revolving when it is going, say, full speed at the rate of 240 to 260 revolutions a minute?

A Possibly. I am not versed in those things.

Q Then the connecting rod and this counter-balance and the crank shaft are all in plain view of one working about the engine?

P. 67. A Yes.

Q And are revolving about the rates at which you describe?

A Yes. * * *

P. 70. Q This boat and its engine are constructed and installed practically the same as all other boats of that type?

A Yes, practically the same.

Q And isn't this splash pan or guard placed in there practically the same as in all other boats of her type?

A No; each engine might be constructed a little different to that.

P. 149. H. S. STUDDERT, produced as a witness on behalf of the Petitioner, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION.

BY MR. BYERS:

Q Your name is H. S. Studdert?

A Yes, sir. * * *

P. 150-1. Q I would ask you whether or not that engine room was completely equipped substantially as all other vessels of the type of the Argo?

A Yes, sir, just the same, just as substantially.

Q What kind of engine?

A fore and aft compound.

Q What is its size?

A 9—22—20.

Q It has three columns on its open face?

A Yes, sir.

Q And the engine faces toward the starboard side of the boat?

A Yes, sir.

Q Could you tell us the size of the boat?

A The boat, I think, is 64 feet long, 20 foot beam, and I am not positive, but I think 9 foot hold. * * *

CROSS-EXAMINATION. P. 153.

BY MR. HALL:

* * *

Q The crank-pit is below the floor, is it not? P. 155-6.

A The crank-pit is always below the floor.

Q Are you sure of that? * * *

Q You made an inspection of this guard?

A Yes, sir, I noticed the splash pan or guard.

Q You call it splash pan and I call it guard, it is the same thing.

A Just a piece of light sheet iron.

Q What thickness was it?

A It is not a sixteenth of an inch, it is very light.

Q Now, did you know at the time that you assumed your duties that it was unfastened at the bottom?

A I knew it was simply laid in there. * * *

P. 163. RE-DIRECT EXAMINATION.

BY MR. BYERS:

* * *

P. 164. Q As a matter of fact, was it or was it not perfectly open and apparent that if he did stick his feet into the crank-pit he would get hurt?

A Certainly.

Q These openings that he could possibly stick his feet through are about how big?

A I never measured them, I think about eighteen or twenty inches probably.

Q And at the foot of these columns and outside was a two by four?

A There was a small board. I don't know what size it was. There was a stick there.

Q About the size of a two by four?

A I could not say.

Q And at the top of these were the cylinders and their casings so that in case of a lurch of the vessel or anything of that sort he could put his hands against these projecting things and keep from going in?

A Yes, sir. * * *

P. 165. Q What is that crank pit for?

A It's a space made for the cranks to go around in.

Q What is the pit for?

A Just a space so as the shaft will revolve.

Q And there is where all the oil and drippings go into?

A Yes sir.

Q And the crank shaft with its counter balance—

A Picks it up.

Q And the straps are revolving around in the crank pit?

A Yes sir.

Q So that when the oil collects—

A It picks it up and throws it over the boiler and over the engine room.

RE-CROSS EXAMINATION.

BY MR. HALL:

* * *

Q You say they made that inspection when the guard was in the same condition it was when Iver was injured? P. 166.

A You speak of the inspection after the accident?

Q Yes.

A No, it was outside then, I changed it.

Q You are positive of that?

A Absolutely.

Q The bottom was loose the same as it was—

A Every inspection until after he was injured.

Q How do you know it was loose?

A It wasn't exactly loose, it was held sufficiently to stay there.

Q There was no bolt?

A It was inside the heads of some bolts.

Q And was not fastened with any bolts?

A It was simply inside the bolts.

Q It was put in there as a splash pan, it wasn't put there with the idea of being a guard and therefore wasn't made substantially, it was not made for the purpose of being a guard?

A It was a splash pan.

Q That being the case, it did not make any difference whether the bottom was loose or not?

A Yes.

Q How was the top fastened?

A By U bolts.

P. 167. Q You could see that the bottom was unfastened?

A The bottom went inside some bolts to hold it.

Q They were not strong enough so that if a person was thrown with his feet against the bottom of it to withstand the pressure?

A It was never put in there for a guard.

Q It wasn't strong enough for that purpose?

A Yes. * * *

P. 171. Q Now, without a guard of some kind there, if the crank pit is lower than the floor, what is there to prevent a seaman from being thrown into the crank pit?

A There are columns there to catch on to.

Q How wide? How far apart are the columns?

A About eighteen or twenty-one inches in the Argo.

Q You think that is a sufficient guard?

A Yes sir. * * *

HOWARD B. LOVEJOY, produced as a witness on behalf of the Petitioner, being first duly sworn, on oath testified as follows: P. 174.

DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name, Captain.

A Howard B. Lovejoy. * * *

Q Are you familiar with a vessel here known as the tug Argo? P. 175.

A Seen her, yes sir.

Q Are you familiar with her engine?

A Familiar with the ordinary fore and aft compound engine. * * *

Q I would ask you if the engine in the Argo is installed in substantially the same manner as in all other vessels of the type of the Argo?

A I think so, yes.

Q I call you attention, Captain, to that part or fixture on this engine known as a splash guard, I would ask if you are familiar with that appliance or appurtenance?

A Yes sir.

Q What is its purpose, if you know?

A It keeps the oil from splashing out on the floor.

Q What causes that oil to splash out?

A Revolving of the engines and drippings from the steam. * * *

P. 176-7.

CROSS EXAMINATION.

BY MR. HALL:

Q Captain, how is the engine installed in the Argo?

A Right into details, I could not tell you.

Q When did you examine it?

A I was aboard the boat the other day.

Q How long were you aboard of her?

A About half an hour.

Q Is that the only time?

A I was aboard the boat when she was building, but did not go into any of the details at that time.

Q You do not know as a matter of fact just how the engine is installed there, only in a general way?

A Yes sir. There is only one way to install an engine though.

Q Do you know whether the crank pit is lower than the floor?

A The crank pit is lower than the floor.

Q How much lower?

A I should think about probably fourteen inches. You have to have room in the pit to swing your cranks.

Q About fourteen inches?

A I have an idea that the bed is about fourteen inches.

Q Do you know how wide the standards are apart?

A I think about two feet.

Q Did you examine this guard that was on there?

A Not particularly.

Q You saw it?

A Yes, a piece of galvanized iron.

Q Do you remember how wide the passage way is around this crank pit?

A I think about three feet, about that, that is outside of the columns. * * *

H. RAMWELL, produced as a witness on behalf of the petitioner, being first duly sworn, on oath testified as follows: P. 183.

DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name.

A H. Ramwell. * * *

CROSS EXAMINATION. P. 185-6.

BY MR. HALL:

Q Are you familiar with the tug Argo?

A Yes sir.

Q Been aboard of her?

A Yes sir.

Q When?

A O, fifty times.

Q You say you are the manager of what company?

A American Tug Boat Company.

Q You have a sister tug to the Argo called the—

A Irene, yes sir, she is the same, has the same engine, you can hardly tell them apart.

P Q Is the crank pit and bed plate in the same position?

A Yes sir, exactly.

Q How much lower is that than the passage way?

A Do you mean on the Irene?

Q Yes.

A How much lower is the crank pit?

Q Yes, the bed plate.

A I should judge just about 12 or 14 inches. * * *

. 194. CAPTAIN JOHN L. ANDERSON, produced as a witness on behalf of Petitioner, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name.

A John L. Anderson. * * *

. 195. Q Have you seen the tug Argo?

A Yes.

Q Have you examined her engines?

A Yes sir. * * *

Q State, Captain, whether or not the engine in the Argo is installed in approximately and practically the same way as all other vessels of her type and class?

A Yes, practically the same way as any other boat of her type.

Q Are you acquainted with what is known as a fore and aft compound engine?

A Yes sir.

Q Is that the kind of engine in the Argo?

A Yes sir.

CROSS EXAMINATION. P. 196.

BY MR. HALL:

Q Captain Anderson, when did you say you saw the Argo, approximately, about one or two months ago?

A Sometime ago, I can't exactly remember. * * *

Q Now, Captain, you say that the Argo is fitted out and built practically the same as all other vessels of her class? P. 198-9.

A Yes sir.

Q What do you mean by that?

A By the engine, more particularly, as a rule they always have a boat built so that they fit in the bottom of the boat for the purpose of getting more power in towing.

Q That makes them a little lower in the crank pit?

A Than on passenger vessels, yes sir.

Q Do you have tugs on Lake Washington?

A I have had some.

Q You are not operating them now?

A No sir.

Q Mr. Byers, in describing this guard or splash pan, as he calls it, described it as sheet iron or tin, or iron, which is it on the Argo?

A I think it is one-sixteenth iron.

Q How is it fastened on the Argo?

A It was fastened on the inside of the columns when I saw it.

Q On the inside of the columns, which way was that?

A Toward the engine, it was fastened on the inside.

Q Was it fastened at the top and bottom, do you know?

A It was fastened at the top.

Q But not fastened at the bottom?

A It stands behind some studs so that they can slip it off quickly.

Q Well, you are quite positive that it was on the inside toward the cranks?

A Yes, sir. * * *

209. JAMES F. PRIMROSE, produced a witness in behalf of the petitioner, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION.

BY MR. BYERS:

Q State your name.

A James F. Primrose. * * *

210 Q Have you seen the tug Argo. belonging to the Pacific Tow Boat Company?

A The Argo? I have seen her, yes sir.

Q I would ask you to state whether or not you are familiar with the fore and aft compound engine?

A Yes sir.

Q Is the engine in the Argo installed practically the same as all other boats of her type and class?

A Practically, yes. * * *

CROSS EXAMINATION. P. 211.

BY MR. HALL:

Q You are still in the employ of the Puget Sound Tow Boat Company?

A Yes sir. * * *

Q When did you make an examination of the Argo? P. 212.

A Probably two or three months ago, I can not state positively.

Q How complete an examination did you make?

A Went down and looked her over through the engine rooms.

Q Did you at that time examine this guard?

A Yes sir, splash plate, you mean?

Q I mean—You saw there a section or guard of sheet iron around the crank pit on one side toward the passage way?

A I saw a plate of thin sheet iron.

Q Where was that sheet iron fastened, to what was it fastened?

A To the columns.

Q On the inside towards the crank pit, or on the outside towards the passage way? P. 213.

A Towards the passage way.

Q At the top and bottom, too?

A Fastened at the top, I didn't notice particularly the bottom.

Q You say, Mr. Primrose, that the engine in the Argo is installed practically the same as it is in all other tugs of the class and type of the Argo?

A Of her class, yes.

Q You say practically, that means there is some difference?

A In installation as well as difference in makes of engines.

Q Is there any difference in installation with reference to the pit being lower than the passage way in some tugs?

A Practically the same, some tugs of the larger class will be put above.

Q And in the smaller?

A All small tugs have them in the bottom of the vessel.

Q What is the difference in height between this passage around the crank pit and the bottom of the pit itself?

A It varies from 8 to 16 inches, generally.

Q What would you say the depth of this crank pit is on the Argo?

A I should say about 12 or 14 inches. * * *

P. 214. Q Have you any other thing across between the standards?

A Just an iron rod up above.

Q Is there an iron rod across the Argo's?

A No, hers is fastened around the columns.

Q How heavy is this iron rod?

A That is the reverse shaft, it is put there for the purpose of reversing the engines, and is made fast across the columns.

Q It serves then as a sort of protection, does it not? P. 215.

A My recollection of the Argo is that she has one too above this splash pan as we call it. * * *

Q How thick is this sheet iron on the Argo?

A Number 16, or number 18, I should judge. * * *

P.